that the hour is late, and I would like to consider their wishes on the subject.

Of Subcommittee No. 2 Dr. Harry Pratt Judson is the chairman. What is your pleasure? Will you read it now or will you read the report tomorrow morning?

Dr. JUDSON. It is wholly immaterial to the committee, Mr. Chairman.

The CHAIRMAN. As it is a short report, I suggest that it be read now. It is not that we welcome its shortness; we want the committee to have its full say and full time to say it. Will you not kindly come to the platform?

REPORT OF SUB-COMMITTEE NO. 2

STATUS OF GOVERNMENT VESSELS

PRESENTED BY DR. HARRY PRATT JUDSON, CHAIRMAN

Mr. President, ladies and gentlemen: The function assigned to this Subcommittee upon its original appointment was "to formulate and agree upon the amendments and additions, if any, to the rules of international law, shown to be necessary or useful by the events of the war" and by subsequent international developments.

In its report made to the Society in 1921, it suggested certain subjects for further study and consideration, including the following:

THE STATUS OF GOVERNMENT VESSELS

a. Owned by a government.
b. Requisitioned by a government.
c. Used for strictly public purposes.
d. Used in whole or in part for commercial purposes.
e. As to neutral governments or individuals in war.
f. As to co-belligerent governments or individuals in war.
g. As to other governments or individuals in war.

The Subcommittee has been requested this year to make a further and more detailed report upon this particular subject.

The events of the war demonstrated the need of a further development and formulation of rules of international law in regard to the status of government vessels, especially those of foreign governments, and their immunity from local jurisdiction. A large proportion of the shipping of the belligerent nations passed under various forms of government control and the transportation of men and materials was a vital factor in the conduct of the war. The all-embracing scope of the war obliterated in great degree former distinctions between military supplies and supplies for the civilian population. In fact, the provisioning of the civilian population became a quasi-military operation. Much of this transportation was effected upon vessels belonging to private owners, and operated by their employees, but requisitioned

by a government at a rate of hire fixed by it, and controlled as to their movements by government officials.

A brief indication of the present state of the law is a necessary preliminary to the recommendations which this Subcommittee is to make. It is well settled that public vessels of war, including naval auxiliaries, and vessels belonging to a government and used for distinctly public purposes, such as revenue cutters, light-house tenders and the like, are immune from judicial process. (See *The Exchange*, 7 Cranch 116; Briggs *v.* The Lightboats, 93 Mass. 157.) Vessels belonging to a government but employed by it for commercial purposes have also been held immune, both in England (see *The Parlement Belge*, L. R. 5 P. D. 197), and in the United States (see *The Maipo*, 252 Fed. 627.)

Under the Act of Congress of September 7, 1916, Shipping Board vessels when employed for commercial purposes were subjected to all the usual liabilities of merchant vessels, but by the amendment of March 9, 1920, they were made immune from arrest, and other methods of obtaining jurisdiction and enforcing liability were provided.

The present status, in foreign jurisdiction of vessels requisitioned by or chartered to a government and operated by or for it, is somewhat uncertain. In England, Shipping Board vessels were held immune. (*The Crimdon*, 35 Times Law Rep. 86.) In *The Roseric*, 254 Fed. 154, a similar decision was made in respect to a British requisitioned vessel serving as an "Admiralty Transport." In *Ex parte* Muir (*The Gleneden*) 254 U. S. 522, the question was presented to the United States Supreme Court, but was not decided, as the case went off on questions of procedure. In *The Luiji*, 230 Fed. 493, and *The Attualita*, 238 Fed. 909, suggestions of immunity were overruled. These cases, however, arose during the period of American neutrality and the suggestions of immunity were not very vigorously pressed. It may have been thought that a direct claim of the public character of a vessel of one of the belligerent nations might subject it to the limitations and disabilities attaching to a belligerent vessel of war coming into a neutral harbor.

In the case of chartered or requisitioned vessels, distinctions may also be made depending upon whether they are under public control or under private control, since they are sometimes operated by government officers and sometimes by private persons or firms under contract with the government.

Another question also arises when vessels temporarily in government ownership or under government control pass thereafter into private hands. In the case of American government vessels, it has recently been held by the United States Supreme Court that the immunity which attaches to them while in government service or ownership, continues as to causes of action then arising even after they pass into private ownership (*The Western Maid* cases, U. S. Supreme Court, January 3, 1922). This decision in effect over-

ruled a line of earlier American decisions. A very recent English decision adheres to the earlier American doctrine. (See *The Tervaete*, 38 Times Law Rep. 460.) In *The Western Maid* cases the vessel was either owned, or operated on a bare boat charter, by the government when the alleged cause of action arose. The case of a requisitioned vessel, operated under government direction by a master and crew employed by the private owner, has not yet been decided by the United States Supreme Court.

In the case of foreign vessels, it is desirable that there should be some recognized and convenient method of establishing the fact of government ownership or control. In the case of *The Roseric*, 254 Fed. 154, this was done by a suggestion presented by the foreign diplomatic representative, but this practice was disapproved in *Ex parte* Muir, 254 U. S. 522, although it had been accepted more than a century ago in United States *v.* Peters, 3 Dall. 121, and had also been allowed by the Circuit Court of Appeals (*The Adriatic*, 258 Fed. 902) and by the English courts (*The Constitution*, L. R. 4 Prob. Div. 39). In *Ex parte* Muir, *supra*, the Supreme Court indicated that such representations should be made through the State Department, but the practice of that Department in accepting and presenting such suggestions at the request of a foreign Power is by no means uniform. The recent practice has been to decline to do so.

This Subcommittee recommends that the subject under discussion be clarified by an agreement upon a body of rules or principles. Each government necessarily has power to determine what immunities it will grant to vessels owned or controlled by it, and how far it will recognize principles of international law according similar immunities to foreign vessels, but this limitation is not peculiar to this special field of international law. It is therefore properly within the functions of the American Society of International Law to assist in the formulation of such a body of rules, in the hope that their justice, logic and convenience, may conduce to their general acceptance.

This Subcommittee has formulated and recommends the following rules:

1. Government vessels are those which are owned or requisitioned by or chartered to a government. If a vessel is controlled and directed by a government and employed for public purposes, it is immaterial whether the interest of the government is that of ownership, or is based upon charter or requisition.

2. A government vessel operated by the government for public purposes is immune from foreign judicial process.

3. A government vessel operated by private persons for commercial purposes is not immune from foreign judicial process.

4. A government vessel operated by the government for commercial purposes is immune from foreign judicial process, but injuries committed by such vessel should render the government liable in its own courts.

5. Municipal law determines the liabilities of government vessels in domestic courts.

6. Every government should accord, both by executive action and judicial decision, at least as favorable treatment to the vessels owned or controlled by a friendly foreign government as it accords to those owned or controlled by it.

7. Some convenient method of proof of the governmental character of foreign vessels should be adopted by international agreement.

The Subcommittee recognizes that some of the foregoing proposed rules present certain controversial features. It may well be that if various governments undertake the operation of commercial shipping on an extensive scale, some of the immunities above suggested will prove too liberal, unless some method is adopted by international agreement for the convenient adjudication and collection of maritime claims arising out of the operations of foreign vessels, similar to that provided by the Act of Congress of March 9, 1920, in regard to claims against Shipping Board vessels.

The immunities which a government affords or denies to its own vessels in its own courts may also limit or affect the immunities which it may justly claim for them in a foreign jurisdiction. (See *The Pesaro*, 277 Fed. 473.)

This Subcommittee has refrained from reporting any recommendations upon the question of the continuance of immunity, in respect to claims arising during the governmental ownership or control of a vessel, after such vessel has passed into private ownership, as it considers this a question of municipal rather than international law. It has also refrained from reporting any recommendations in regard to the status of foreign government vessels in the ports of a neutral or of a co-belligerent nation, in time of war. The general obligations of neutrality are beyond the scope of this report. Special regulations on the part of neutrals, or of allies, or of co-belligerents operating jointly against a common enemy, depend so largely upon the special circumstances of varying situations that this Subcommittee has thought it inexpedient to attempt to formulate any general rules upon the subject.

The questions discussed in this report involve various elements of policy as distinguished from law, upon which the varying interests of different nations may easily lead to different conclusions. The questions present themselves in different aspects in peace and in war. During the war the movements of almost all vessels were matters of great importance to the belligerent governments, and it was essential that they should not be delayed by judicial proceedings. In normal times of peace, it is appropriate that where vessels are performing commercial functions, there should be some effective and convenient method of enforcing pecuniary claims arising out of their operation. Just where the line is to be drawn between the immunity which properly attaches to the operations and instrumen-

talities of government and the responsibility which normally arises out of commercial activities is a question to be solved by the course of practical evolutionary development rather than by the *a priori* reasoning of theoretical jurisprudence.

Respectfully submitted by Subcommittee No. 2, this 28th day of April, 1922.

HARRY PRATT JUDSON, *Chairman.*
HOWARD THAYER KINGSBURY, *Secretary.*

The CHAIRMAN. The report of Subcommittee No. 3 is now in order.

REPORT OF SUBCOMMITTEE NO. 3

PROBLEMS OF MARITIME WARFARE

PRESENTED BY PROFESSOR GEORGE GRAFTON WILSON, CHAIRMAN

Mr. President, ladies and gentlemen: Subcommittee No. 3 of the Committee for the Advancement of International Law was designated, "To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore."

In the report of Subcommittee No. 3 at the meeting of April 29, 1921, there was mentioned as among typical divergent views:

> Problems of maritime warfare, *e. g.*, the abolition of the distinction between absolute and conditional contraband, and the extension of the doctrine of continuous voyage.
>
> The following suggestions have been made:
>
> (a) That outside of neutral jurisdiction, the ultimate destination of a neutral vessel or cargo determines the liability of either to condemnation.
>
> (b) That there should be considered the abandonment of the doctrine of conditional contraband, specifically with reference to the treatment of foodstuffs.
>
> (c) That there should be considered the feasibility of a general agreement concerning the operation and effect of neutral governmental certification of the non-hostile uses of neutral foodstuffs destined to hostile territory, as a safeguard against capture and condemnation.

I. A review of the practice during the World War shows an abandonment of the distinction between absolute contraband and conditional contraband, not merely as regards foodstuffs but in general as regards all classes of goods.

The reasons were such as:

(1) The impossibility of devising acceptable lists of absolute and conditional contraband.

(2) The difficulty in distinguishing between material for food and for war purposes, *e.g.*, fats.

(3) The difficulty in determining the actual use to which foodstuffs